

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

MAY 5, 2016

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, May 5, 2016, at 1:00 p.m., Offices of the West Virginia Insurance Commissioner, 900 Pennsylvania Avenue, Room 912, Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman
Kent Hartsog, Vice-Chairman
Delegate Mick Bates
James Dissen
Dan Marshall
Sydney Thornhill-Brown (via telephone)
Delegate Steve Westfall

1. Call to Order

Chairman Bill Dean called the meeting to order at 1:00 p.m.

2. Approval of Minutes

Chairman Bill Dean: The minutes of the March 10, 2016 meeting were sent out. Did everybody have a chance to look at them? Is there a motion for approval?

James Dissen: So moved.

Kent Hartsog: Second.

Chairman Dean: A motion has been made and seconded to approve the minutes as stated. Question on the motion? All in favor, "aye." All opposed? The ayes have it.

3. Office of Judges' Report – Rebecca Roush, Chief Administrative Law Judge

Judge Rebecca Roush: I'm happy to be here. Happy Cinco de Mayo. It's my pleasure today to give you the report of the Office of Judges. It looks like you have it in black and white. My apologies to you. If it would be easier for you, I could actually bring these. Alan

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[Drescher] gave you this report at the last meeting, and we had some technological difficulties with our computer system being down during the month of March, but this report looks better.

In the month of April we acknowledged 271 protests for a total of 1,143 for calendar year 2016. How that breaks down – we have 5.86% for the Old Fund; 75.77% for Private Carriers; 18.37% coming from the self-insured market. I'm happy to take any questions you might have related to this report before I move on.

Chairman Dean: Ms. Brown, do you have any questions? Or maybe you do not have the report.

Ms. Sydney Thornhill-Brown: I do not have the report. Would it be possible for you to email that?

Judge Roush: Yes. I sent it out to everyone. I know our Office of Technology has updated our email addresses. I did get a lot of emails coming back to me, so that could be something within our email addresses, but I will attempt to send that to you again.

Chairman Dean: We'll see that you get it. It won't be a problem.

Ms. Thornhill-Brown: Okay. Thank you.

Chairman Dean: Delegate Bates, do you have any questions, sir?

Delegate Mick Bates: No.

Chairman Dean: Delegate Westfall?

Delegate Steve Westfall: No, sir.

Chairman Dean: Mr. Dissen?

James Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Kent Hartsog: No.

Chairman Dean: Mr. Marshall?

Dan Marshall: No, sir.

Judge Roush: I just want to acknowledge that this is Employee Appreciation Week within the agency, and we have a couple of employees that are acknowledging milestones within our office. For those of you who don't know, State Government acknowledges years of service for employees when they reach significant milestones at five, 10, 15, 20, 25, 30, and 35 years. This year we had three employees who acknowledged significant milestones, and I wanted to acknowledge those employees, and all of the employees in our office.

Every month I come to you with a report that gives you particular numbers and statistics, and I wanted you to know that the Office of Judges is more than just a report. There are a lot of employees that put a lot of hard work into running my office, and we have more than 55 employees that go out of their way every day to make certain that our operation runs smoothly. I would like to take a moment to acknowledge their hard work, and simply "thank" them from the bottom of my heart for all of their hard work and dedication that goes into making this operation run smoothly.

Three employees – Peggy Weckel is a Claim's Deputy assigned to Judge Martha Hill. She has 15 years of service that is being acknowledged this year. She has 10 grandsons and lives on a farm with four horses. Lisa Conley has 15 years of service. She is a secretary who works very hard, and is always looking for something new to do in our office. She most recently lost a son and is raising four grandchildren on her own. Sandra Craft has 20 years of service. She has two children and three grandchildren; two with cystic fibrosis, which she advocates daily to find a new cure. That is just a few of many hard working employees, 55 of which are part of our office.

There is one particular story that I wanted to share with you that was compelled upon my heart today to share with you. . .just because I think it goes to show how hard working some of our employees are, and this is a very serious story. Let me just take a minute.

Chairman Dean: Take your time.

Judge Roush: We had an employee who was a secretary, and I knew her first as a . . .and Henry [Bowen] knew her. She was a secretary for the OP Board, a hard working employee. She worked 30 years for the Office of Judges. She was a secretary who ran the recording equipment at the OP Board. She had a hardy laugh, and often made Dr. Walker and all the attorneys laugh. The Judges would often fight for her because she was the best secretary to work with. She eventually acquired pancreatic cancer a couple of years ago. It was hard for her to accept the diagnosis that she had pancreatic cancer, and she didn't want

to leave work. Every so often I would go to her and say, "You know, maybe it's time for you to consider retiring, go home, enjoy your family, and think about what you want to do, and enjoy the time you have left with your loved ones." And she said, "No, Rebecca, I don't want to do that. I've never been off the payroll at work." She worked for 30 plus years. And she said, "I'm going to stick it out. The doctor says I can make it." And I said, "Okay, when it comes time to do that you just see me again and let me know." And we watched her deteriorate and become frail, and Judge Drescher's wife was also going through a similar illness. We watched her become more and more frail. I remember as the time was drawing nearer to her passing, Judge Drescher and I went together to see her again and I said, "Shirley, hey. . .," and I tried to make light of it and make a joke of it, and I said, "Hey, you know, maybe it's time to go home and kick up your feet and time to watch Maury Povich and find out who the baby daddy is." She said, "No, Rebecca. You know, I've never been off the payroll here at the Office of Judges, and I'm not going to go off the payroll. I want to be here, and this is where I want to be. This is where I belong. This is what I've dedicated my life to." I want to let you know that Shirley became sick on a Thursday. She left work that Thursday, and was admitted to the hospital on Friday, and she died on Monday. She never went off the payroll. And that's the story of one of our very dedicated employees at the Office of Judges. That's a very sad story, but I think oftentimes the stereotype of state employees is that they are not hard working, that they're not dedicated, and they don't go the distance. I think that Mrs. Parrish's story goes to show you that such is not the case. I wanted to share that with you during "Employee Appreciation Week," that we still have employees out there who actually devote their entire lives, their entire careers to going the distance. Thank you for letting me be emotional and telling the story.

Chairman Dean: Thank you.

Commissioner Michael Riley, OIC: Thank you for sharing.

4. General Public Comments

Chairman Dean: We'll move onto general public comments. Anybody from the general public have a comment they would like to make today? [No comments.]

5. Old Business

Chairman Dean: We'll move onto old business. Does anybody from the Industrial Council have anything they would like to bring up under old business? Ms. Brown, do you have anything you want to bring up?

Ms. Thornhill-Brown: No, sir.

Chairman Dean: Mr. Bates, anything you want to bring up?

Mr. Bates: No.

Chairman Dean: Mr. Westfall?

Mr. Westfall: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, sir.

Chairman Dean: Very good. We have an update on the Safety Study Report, Mr. Pauley.

Update on Safety Study Report – Andrew Pauley

Andrew Pauley, General Counsel, OIC: Mr. Chairman, members of the Council, and other interested parties, just to update you on the statutory required Safety Study Report that we do every two years, and this happens to be the year we are doing it. By way of background, in January we reached out to various entities to see who could perform this study for us. WVU did it for us two years ago. We reached out to them again, and they said they could do it. We reached out to Marshall University, and they said they cannot do it. We had trouble getting hold of them, and their department was preventing them from being able to do this study for us. All of the entities in the private sector were more expensive, so we went ahead with WVU again.

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The way the process works is we have a questionnaire that is created and sent out basically dealing with risk management and safety. It is sent out to a number of insurance carriers and self-insured employers, and we expect their responses. Then we have those tabulated into a draft report and present it to the Industrial Council, and work with you on coming up with the final report, final conclusions, which is ultimately due July 1. Then it is presented to the Joint Committee on Government and Finance (Legislature).

At this point it is pretty much completed, but we don't have final reports from them which is being tabulated. We had two or three self-insured employers and a couple of carriers that have not responded. They asked for an extension, and we granted that, and we are working on getting their compliance. We would like 100% compliance from everyone we send them out to. So, hopefully we will get those reports in. We have a special meeting on June 23, and we hope to get this out to you much sooner than that. Sometime this month we'll get a "draft" copy out to you. We'll then receive comments, and any discussions before we get a final report by June 23 to vote on to submit to the Joint Committee on Government and Finance. I'll be happy to answer any questions. But we are sensitive to making sure that everyone on the Industrial Council gets a copy and has the ability to comment before we would submit a final report. Of course, you will have two chances because you will vote on the final report to send to the Joint Committee. So, there should be plenty of transparency.

Chairman Dean: Very good. Ms. Brown, any questions?

Ms. Thornhill-Brown: Is that a set meeting on the twenty-third?

Chairman Dean: Yes. It's our next meeting on the agenda today.

Ms. Thornhill-Brown: Okay.

Mr. Pauley: Mainly because of this report, and the need to get it out by the first of July, we had to move up our timeframe and meeting.

Chairman Dean: Delegate Bates, do you have any questions, sir?

Delegate Bates: Could I receive a copy of a previous report? I'd be interested in seeing the format.

Mr. Pauley: I think we sent it, but I'd be happy to re-send it to you. We can send out a previous copy to everyone. No problem.

Chairman Dean: Any questions, Delegate Westfall?

Delegate Westfall: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: You are going to have us a final draft that the Insurance Commissioner is happy with by the end of May, and then we'll have a week or two to comment on it, and get it back to you. So, if there's any changes by the 23rd we should be okay.

Mr. Pauley: Yes. Maybe even sooner. We hope in the next couple of weeks we'll have something to get to you to give you more time to review and comment.

Mr. Hartsog: Sounds like a good schedule. Thank you.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Very good sir. Do you want to go ahead with your next topic?

Statutory Obligations of Industrial Council – Andrew Pauley

Mr. Pauley: Yes. Delegate Bates had asked that we do an overview of the Workers' Compensation Industrial Council authority. It's a good time for the new members and everybody here, and it's always good to revisit that. [Mr. Pauley passed out copies of the statutory authority.]

Chairman Dean: Ms. Brown, we'll have a copy sent to you.

Ms. Thornhill-Brown: Thank you.

Mr. Pauley: We'll go through this quickly. It really just tracks and mirrors the statute, and if we need to discuss any points please don't hesitate to stop me. On the second page, Statutory Authority Components, basically I want to talk about the composition. The components are the ones that are in the statute which are listed: Consult with Insurance

Commissioner, Rule Proposals, Monitor Performance Standards, Budgetary Concerns, Information Gathering, Conduct Overview of Safety Initiatives, and Establish Claims Index. This Legislature has stated that in W. Va. Code §23-2C-5(A), "There is hereby created within the Office of the Insurance Commissioner an Industrial Council." So, the Industrial Council is created under the umbrella of the Insurance Commissioner. It is defined in W. Va. Code §23-2C-2(H). It means, "The Advisory Group established in §23-2C-5 of this Article." If you look at that term in the dictionary it clearly means, "A body to advise, to give advice, to consult, to work with." And that is the construct of the way the Legislature has created you.

If you look next under Composition, you basically have 10 members. We have five voting members, five advisory non-voting members. There are qualifications for the five voting members that I'll get to in a minute. They are all appointed by the Governor with advice and consent of the Senate, and they have specific terms that are so complicated I would not take up the time today to explain them. But believe me they are in there, and I think we have them right. There are five advisory non-voting members – two members of the Senate, two members of the House of Delegates, and the Insurance Commissioner. At this point, we do not have two members of the Senate appointed, but we do have two members of the House appointed. And no more than three can be of the same party regarding those four members of the Legislature.

Qualifications on the Composition – Each shall hold a Baccalaureate Degree from an accredited college. There is an exception. One member may serve without a degree, but 15 years of experience. All should have at least 10 years in their field of expertise. One specifically is a certified public accountant with financial management or pension or insurance audit experience. One should be an attorney with financial management experience. One should be an academician holding an advanced degree in business, finance, insurance or economics. One shall represent organized labor. I guess everyone knows who they are.

In W. Va. Code §23-2C-5(C), it lays out the various points that I'm going through now. Of course the first one is "Consult with Insurance Commissioner – Guidelines, Operation & Regulation of Workers' Compensation Market." Obviously, the Legislature has posited regulating the workers' compensation market pretty much exclusively with the Insurance Commissioner, and I lay out the statutory guidelines. All of the previous Workers' Compensation Commission and Board of Managers' authority, including ratemaking, adjudication of claims, and oversight of the market reside with the Insurance Commissioner. That's in Chapter 23. It was also put in Chapter 33 on the next page. All authority is transferred to and imposed upon the Insurance Commissioner from the effective date of this enactment. These were the insurance reforms of 2005. "The Insurance Commissioner shall regulate all insurers licensed to transact Workers' Compensation Insurance in this State. . ."

The previous clause gives all other authority that was transferred to him, which would include §23-2-9, which includes self-insured employers.

The next section deals with Rule Proposals. The Industrial Council has the authority to review, approve, reject or modify rules that are proposed by the Insurance Commissioner. I think that is an important point here that these rules, specifically laid out by the Legislature, call for the Insurance Commissioner to in fact propose those rules. Of course, we have various protocols and issues that we have to go through in getting our parent, the Secretary of Revenue to review, and the Governor's Office to approve. But we are exempt from Legislative rulemaking because there is the Industrial Council body. You are the body to review, approve, or reject the modified rules, and you have a say in any rules that come out of here. They are still made public. We still receive comments. There is still going to be hearings held for the public to speak out. People are allowed to voice their concerns about any rule that goes out.

There is the ability to establish and monitor performance standards. And I think you see that when you get performance reports from the Office of Judges. There have been many times where members of the Council has asked for various reports on regulations, on statutes, on compliance, enforcement, and those kind of issues. So, clearly that can always be requested and brought before you for review.

The next one deals with budgetary concerns. It basically says that you shall have a budget within the Insurance Commissioner's Office, which you do, and that any cost associated with that and expense reimbursements will be taken care of by the Insurance Commissioner.

You have information gathering ability to get records and consult with the Insurance Commissioner as we discuss financial solvency issues of self-insured employers and other entities [sometimes in Executive Session], and the ability to receive presentations, and get other information to do your job; consult and advise the Insurance Commissioner.

We've talked about the safety initiatives and conduct that overview every two years. And that's exactly what we're in the middle of right now. We've fulfilled that duty every two years since the Industrial Council was created.

Last, Establish Claims Index, which has been created and requires EDI reporting. Claims that are created and incurred by self-insured employers and private carriers are reported to this index for tabulation for litigants to obtain information [or other individuals] pursuant to the W. Va. Code of State Rules §85-2-1, which was approved by this body.

That's a quick overview. I think everyone is aware of the subject matter and contents. I would be happy to answer any questions, or if there are questions later feel free to send an email.

Chairman Dean: Ms. Brown, any questions on what you've been hearing?

Ms. Thornhill-Brown: No questions at this time.

Chairman Dean: Thank you. Delegate Bates?

Delegates Bates: I'd like to thank Mr. Pauley. On rulemaking. . . unless there are rules proposed by the Insurance Commissioner they wouldn't necessarily come before this group for consideration.

Mr. Pauley: That's correct. We believe other people can make public comments and receive and ask for various things. But the way the statute is written and because of the structure of government the way it is at this point, the Insurance Commissioner is the one that holds the authority. He has to shepherd the rule through the process, if you will; get the various sign-offs up and down the various chains. As you know, rulemaking is very complicated. So, yes, it is ultimately his responsibility. It does say, "Proposed by the Insurance Commissioner."

Delegate Bates: One more question. On the next page – performance standards. Are there other performance standards that we look at and review in terms of the existing market?

Mr. Pauley: I think over time there have been. Obviously it's really. . .

Delegate Bates: One comes to mind just from my work in my own particular area as a provider of services where I'm in contact with various providers that provide medical services is the timely payment and issues related to. . . we have a number of carriers that are active within the State of West Virginia in terms of providing coverage for injured workers. So, providers that are in the market. . . dealing with multiple carriers from across the country, and some of them are certainly more responsive in paying their bills, so to speak.

Mr. Pauley: Right.

Delegate Bates: Is that something that would fall within this jurisdiction to look at or. . .

Mr. Pauley: I think it would depend on the scenario and the situation. I mean, obviously the Commissioner has authority to look at. . .and the Office of Judges, as hearing examiners, hear failure to timely act issues. There is a provision in the statute on "failure to timely act on a claim." We're mainly looking at claims conduct in this particular arena. We do not get involved in disputes between two parties like a "bill" or a "debt" that is owed. We don't necessarily get into that unless it is harming a claimant, a particular entity, because sometimes those things get into, "Did you use the right ICD coding," and those kind of things. It would depend on the situation. Then the second part would be whether we felt that it was important enough to. . .what the complaint was, and if we needed to look into it. Obviously, the Commissioner has authority to do data calls and those kind of things. But it has to be measured, and it has to be a cost benefit analysis before we would just simply ask everybody to give us all the data they have within their business. It's not something that we would necessarily capture all the time, and maybe something we would have to go out and get if it was becoming a problem and we have to look at it. There have been times where the Council has asked us compliance questions, regulation questions, what's going on with a particular entity, how you're doing this, and that kind of thing. We've had compliance and enforcement type of presentations made.

Commissioner Michael Riley, OIC: Generally, in the aggregate, and obviously we are regulators and we don't point out a particular company, but we do have a Consumer Service Division where we can address any individual consumer issues and the company has to respond to us in a timely manner.

Delegate Bates: So, a complaint driven type process in terms of that aspect of it, as opposed to looking at the overall market conduct. . .when you look at something like timely payment of claims, for example, that would be something that would be more appropriately addressed. . .

Commissioner Riley: We do have a market conduct process where we go out and do exams, and those are driven by complaints or indicators that will pinpoint us to a particular company. And those reports are all public and put on our website after the exams. As Andrew mentioned, there is the "failure to timely act process." It goes through that.

Mr. Pauley: But there is "regular" looking at the industry and the self-insured employers, and there are regular exams, as the Commissioner stated. And regular review triggers data mining, so there is constant review and ability to look at various triggers that are causing a market disruption or a problem that needs to be looked at.

Delegate Bates: Thank you.

Chairman Dean: Delegate Westfall, do you have any questions?

Delegate Westfall: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: Yes. I just want to thank you. When I first came on the Council there was an issue [prior to you] as to what the authority was of this Council, and we had quite a long discussion on it, so I think it's good every so often to have this type of – I'll call it "Council Training." In fact, I may suggest that since we have these Council meetings every other month or so that maybe we take a small five, ten minutes and go over Council training in different areas on what the Insurance Commissioner does, and have the department head make the presentation. Just a suggestion.

Chairman Dean: Mr. Hartsog, do you have any questions?

Mr. Hartsog: None.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Mr. Pauley, is there anything you'd like to add?

Mr. Pauley: No, sir.

Chairman Dean: Thank you, sir. Commissioner Riley, would you like to do the Old Fund update?

Old Fund Update – Commissioner Michael Riley, OIC

Commissioner Michael Riley: I'll pass these out. This is a little more technical. Delegate Bates also asked for an update on the Old Fund. What you have here [on the handouts] is a couple of slides that we provide for our Legislative Interim Meetings with Government Organization and Finance, so this is all public information. Just to lay the ground work so everybody knows exactly what the Old Fund is, those are for workers' compensation claims. They were incurred prior to June 30, 2005. These are all the liabilities that were under the old Workers' Compensation Commission and that privatization. Any new claim was born by the private market, so it is a runoff fund.

Generally there's not new claims coming in there. To give you a feel of what we had as of January 2008, there were 48,000 active claims. As of March 31, 2016, the active claims are down to 13,932, so there has been a significant decrease. On a monthly basis we're probably dropping about 150 in the past each month. Now it is going down to maybe 50 or 75 a month, and that is to be expected as these claims go off. People will drop off due to age; no longer eligible for the benefits; some people expire; just natural things; or maybe their treatments are completed; and there is no longer a reserve out there.

The next slide shows you from the liability perspective of the progress. When we first took this over, in our first audited financial statement as of June 30, 2006, the discounted liabilities – and that's discounted at 5% – was about \$3.2 billion. We did not have assets to support these liabilities. The deficit was about \$2.2 billion. You take that to undiscounted or nominal basis, it was \$5 billion in liabilities and \$4 billion in a deficit position.

As of June 30, 2015, we made significant and wonderful progress, and the discounted liabilities there are \$1.4 billion, and with our assets the audited actuarial deficit was only \$90 million. A much smaller number and much more manageable number. What got us to that, other than the claims services and the way the claims developed, is that the State was dedicating a significant amount of revenues on an annual basis – your tax dollars going to help pay down this deficit. There was a policy surcharge for every workers' compensation policy, about 9%, bringing in about \$34 million dollars. That's a variable number, and that is based on premium. So, it has shrunk over the years as loss costs, and premium volume for workers' compensation has decreased over the years.

Self-insureds, by statute, contribute \$9 million dollars every year. That is payroll based at assessment, and that was a fixed amount. Personal income taxes, instead of going to provide other State services, were coming to help pay down this Old Fund. There's a couple of references in the Code, but the total amount on an annual basis is \$95.4 million. Then there was the severances taxes – that was on your coal, natural gas, and timber. Also, that's variable. Its production based, and is about \$100 million. Some years it was less than \$100 million; latter years it was more than \$100 million. Then there were the Lottery funds of \$11 million every year that were dedicated. Each year the Old Fund benefited by receiving approximately \$250 million dollars to help eliminate this deficit position, and pay the workers' compensation claims that have accrued.

To give you a feel for how much money has been collected over ten and a half years, it's about \$2.8 to \$2.9 billion. It has been dedicated from these sources here. The severances taxes was about \$1 billion; personal income taxes about \$800 to \$900 million. You can see how that breaks out.

There has been a change with the deficit position getting to only \$90 million. A lot of dedicated revenues continue to flow in there. There was a Bill passed this Legislative Session, Senate Bill 419. Essentially it took all the money that was going into the Old Fund. We're not getting money any more. It stopped. It stopped as of February 1, 2016, or February 29, 2016, depending on the revenue source. So, all of the policy surcharges and the self-insured surcharges are now going to the General Revenue Fund. Personal income taxes completely ceased from going to the Old Fund. That will automatically go the General Revenue also where it has always belonged. Severance taxes from February 29, 2016 to June 30, 2016, they do remain, but they are not going to the Old Fund. They are going to General Revenue, and then they terminate as of July 1, 2016. The Lottery Funds, from February 29, 2016 to June 30, 2016, will go to General Revenue.

There are a couple of safety valves in here for the surcharges and the Lottery Funds. In 2017, if they remain, they can either go 100% to the Old Fund or they can go 50% to General Revenue and 50% to the Old Fund. That's about \$50 million dollars in the aggregate, and they might split that up.

Henry Bowen, Executive Secretary, WV Self-Insurers' Association: Commissioner, could you repeat that again? After fiscal 2017, then the Governor can elect where the money goes basically with the consent of the Legislature.

Commissioner Riley: Correct. In fiscal 2017, the only thing that is left that could go to the Old Fund are the surcharges and Lottery Funds. However, by Executive Order, if deemed necessary under legislation, he/she could dedicate half of it to General Revenue and half of it to the Old Fund.

Delegate Bates: Just to clarify. . .we can only get up to half, but no more than half.

Commissioner Riley: That's my understanding. I probably need to look more specifically at the language, but I think it can be dedicated up to half. . .

Delegate Bates: Until you get the certification.

Commissioner Riley: Right. The surcharges. . .

Mr. Pauley: And he can do it early too. That was in the statute.

Commissioner Riley: The next slide [that we provide to the Legislature] gives you the trend. It kind of gets to the meat here. . .the Old Fund cash statement. You can see the numbers here. The far left column for fiscal year 2016, you get the beginning cash balance of \$1.3 billion dollars. There is a significant asset base there. Personal income tax, we've collected \$42 million; won't collect anymore; severance tax \$73 million; total operating revenue of \$154 million. As everybody is aware, if you do not have a dedicated revenue source, we're going to be living off investment earnings, and the unfortunate concern right now is that you have a depreciation of our asset as of this cash statement of \$65 million dollars. For the model to flow and work properly you need better returns than that, and those monies compound upon themselves. I can say that – although we don't have updated cash statements for April – this number is somewhat turned around and we're probably in a negative \$20 million. Hopefully, by the end of the fiscal year that will be in a positive position.

You can see on the expenditures here that these are medical payments – PTD's are your indemnities, fatals of 104 weeks. We continue to make those payments. They continue to trend as you would expect with a closed book of business, leaving us an ending cash balance of \$1.2 billion; obviously being significantly impacted by our investment earnings.

Mr. Hartsog: \$1.2 billion. . .

Commissioner Riley: \$1.2 billion. That's a large number.

Mr. Hartsog: It was a "b" and not a "m."

Commissioner Riley: It is not a "m." So, certainly there are significant liabilities out there. I think when we're talking about a "deficit" position of \$90 million, we've got to put that in perspective of \$1.2 billion.

The impact of the Senate Bill change. . .for this fiscal year we are going to receive \$100 million dollars less. Those funds will be going to General Revenue, and essentially what the Old Fund will rely on is investment income, and the way claims develop. This isn't a mortgage payment where we have fixed amounts that are going out. These are claims and health issues, and there's always new developments in the medical field. So a claim that you may have allocated for another \$50,000.00 may run

into some complications and cost you \$1 million dollars. There's always some fluctuation there.

On investment income, that's variable too. However, if it all stays relatively constant, and you've been relatively successful over these ten years to get to where we're at, we should be in a good position. As far as when we'll know where we really stand, we'll have an actuarial report available October 2016. That will give us brand new numbers on where we're at. Like I said last year, the difference was \$90 million. This year, hopefully, it's zero. But you have to look. . .considering that we're going to have \$60 million dollars in investment income, and I don't think we're going to have \$60 million dollars in investment income since we are in a negative position right now.

The positives are really close to having this fully funded and moving on. Claims expenses – we have not run into any difficulties. Those do trend as expected. But the negatives. . .the whole underpinning of this fully funded position is that you are going to rely on a discount rate of 5%, which says essentially we're going to make 5% on our money every year for the whole thing. Some people shake their heads. It's been a challenge for the last couple of years. Whether an actuary will agree with that or they will drop it down to maybe a 3%. If you drop it down to 3%, it will then continue the need for the additional funding. Lots of variables out there, and lots of complications. But really it's somewhat simple if you just think that its investment income driven, and how the actual claims themselves develop, and both of those can change. I'd be happy to answer questions.

Chairman Dean: Ms. Brown, any questions?

Ms. Thornhill-Brown: Not at this time. Will you be able to email that as well?

Commissioner Riley: Certainly.

Chairman Dean: Yes. We will get it to you.

Ms. Thornhill-Brown: Thank you.

Chairman Dean: Delegate Bates, any questions, sir?

Delegate Bates: Thank you, Commissioner. I'm looking at the Old Fund cash statement, fiscal year 2017. The revenue streams that we have here – personal income tax, severance tax is \$73 million dollars. That's gone.

Commissioner Riley: Severance taxes no longer comes under the Old Fund.

Delegate Bates: So, the debt reduction surcharge . . . that would stay.

Commissioner Riley: That could kick back in 2017, and that would be about \$34 million plus \$9 million. Nine is for the self-insured. But there is also the option through Executive Order to only take half of that, and give the other half to General Revenue.

Delegate Bates: So, we project that number to be somewhat as a stable number, but it could go in either direction based upon the status of the fund.

Commissioner Riley: It's about. . .I'll say \$42 or \$43 million dollars. Nine million dollars is set, and the \$34 million that's on the surcharges is based upon the premium volume which has dropped some.

Delegate Bates: Then you've got the Lottery, so the Lottery line item stays.

Commissioner Riley: It's a fixed amount too. Yes, sir.

Delegate Bates: And then the employer premium, so we've got about. . .would it be true to say we've got about half of what we did have coming into that? Somewhere in that range.

Commissioner Riley: For fiscal year 2017?

Delegate Bates: Seventeen. . .from 2016.

Commissioner Riley: We'll say \$250 million dollars in the past. We will probably have \$50 left.

Delegate Bates: If you look at the outgoing, they are in the \$130, \$140. . .

Commissioner Riley: If you go over here you'll see calendar year. We spent about \$188 million last year, and \$198 million before in expenditures. I would expect that there would be about \$178 million this year, ending June 30, 2016.

Delegate Bates: Without investment return and the amount of money going in would be adequate to. . . the amount of money that's going in will need to continue to go in.

Commissioner Riley: That is the risk. But there are other variables. The other variable is what the liability amount is, and that is done via an actuarial review.

Delegate Bates: Would it be true to say that the concern was initially that we would maybe over fund it? And now maybe the concern is that we may potentially. . .

Commissioner Riley: I think there has been reasonable prudent approach by the Legislature, and that you could have thrown another \$100 million dollars there, and then come back and have an actuarial report and say, "Hey, you have over funded this by \$100 million." And I think the decision was made that there are other State needs for these funds, and we have some uncertainty here. Obviously, we're in a comfortable position with a \$90 million dollar deficit. We also continue to have – should they be needed – these dedicated revenue sources, surcharges, and Lottery funds. A report may come out in November. I'm not saying it's going to, I'm just saying it's possible, and say that we no longer need even the surcharges, that we're at a fully funded position. The investment income is supposed to be \$60 million, and it is certainly not that. So it will probably impact what we come out with.

Delegate Bates: The certification, is it a moment in time if the actuary comes and says, "As of Monday you are fully funded." We're done; lock it up; throw it away. Then on Tuesday if the market drops 400 points, then you will deal with that some other time.

Commissioner Riley: All decisions need to be. . .understand that. . .that it is just a snapshot in time based upon these numbers. We are fully funded. Based upon the assumption that you're going to get a 5% return or whatever the return will be. . .if you lose it to 4% or 3%. So, all those different variables would come in there. You may not need to address it for another 10 or 20 years. You may need to address it next year. So it is just a snapshot.

Delegate Bates: Very helpful. Thank you.

Chairman Dean: Delegate Westfall, do you any questions?

Delegate Westfall: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: A couple just for clarification. How is the \$1.3 billion invested?

Commissioner Riley: It is \$75 fixed, and \$25 stock. It is invested via the Investment Management Board with the. . .we're trying to earn a 5% return using their expertise.

Mr. Hartsog: And the 5% is over time, not for any specific. . .

Commissioner Riley: It is, and I think that's important too. Right now we've been in a poor investment return environment for the last year or so. It does appear the last couple of months that maybe we're turning back around, but it takes a while. As we know rates do fluctuate. One of the reasons we're in a good position is that we did earn a lot of money in the past. We are doing better than 5%.

Mr. Hartsog: And tax collections were higher than expected too, especially severance from oil and gas and coal.

Commissioner Riley: Severance tax was the big driver.

Mr. Hartsog: Personal income taxes going into the Old Fund is done now?

Commissioner Riley: Correct. It is done.

Mr. Hartsog: Severance tax is July 1.

Commissioner Riley: In the Old Fund it is done.

Mr. Hartsog: In the Old Fund it is done February 29, and July 1 it's done. It's coming off period.

Commissioner Riley: Correct.

Mr. Hartsog: Okay. The policy surcharges on premiums and self-insureds and Lottery are going to keep going although the Governor would have the opportunity, if he so desires, to channel one-half of them back to the General Fund if he chooses to.

Commissioner Riley: That is correct.

Mr. Hartsog: Okay.

Commissioner Riley: They still do exist because we have not reached a fully funded position. Until we get an actuarial report we will know where we stand.

Mr. Hartsog: And that leads to the second part of that question. Those three items are subject to the actuarial certification, if you will, that once its deemed fully funded then those taxes would terminate.

Commissioner Riley: Right. They would be tied to that.

Mr. Hartsog: That's all I have.

Chairman Dean: Mr. Marshall, do you have any questions?

Mr. Marshall: Just two. I assume at some point in time that 5% was determined by an actuarial study. Is that correct?

Commissioner Riley: It has been 5% forever. I think for consistency purposes, and like I said in the past, we have earned more than 5%. In recent years we've earned less than 5%. But that number has been selected by us to keep it at 5%. That is a decision that needs to be made by the decision makers. Are we comfortable with 5% or do we need the 3%? Are we comfortable with 4%? I think the State does the pensions at 7%, so it's something the decision makers need to know – what the risk is and what they are basing it on.

Mr. Marshall: Did I understand you to say that there is going to be a new determination actuarially based on October 31, 2016 numbers?

Commissioner Riley: Every year we do one at the end of the fiscal year, so it will be as of June 30, 2016. It does take a few months. It should be available around October, so we'll know more in October.

Mr. Marshall: And that's done by an actuary that the Commission employs?

Commissioner Riley: Yes. It is done by an actuary that the Commission employs, and then reviewed by a separate auditing firm that the Commission employs because we have our financial audit. It is reviewed by a couple of folks.

Mr. Marshall: Thank you.

Chairman Dean: Any other questions for Commissioner Riley?

6. New Business

Chairman Dean: We'll move onto new business. Does anybody from the Industrial Council have anything they would like to bring up under new business?

Chairman Dean: Ms. Brown?

Ms. Thornhill-Brown: No, sir.

Chairman Dean: Delegate Bates?

Delegate Bates: No.

Chairman Dean: Delegate Westfall?

Delegate Westfall: No.

Chairman Dean: Mr. Dissen?

Mr. Dissen: No, sir.

Chairman Dean: Mr. Hartsog?

Mr. Hartsog: No.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, Mr. Chairman.

Chairman Dean: Commissioner Riley?

Commissioner Riley: No, sir.

Chairman Dean: Mr. Pauley?

Mr. Pauley: No, sir.

7. Next Meeting

Chairman Dean: The next meeting is Thursday, June 23, 2016 at 1:00 p.m. Does that meet everybody's schedule? Very good.

8. Executive Session

Chairman Dean: The next order of business is the Executive Session. The next item on the agenda is related to self-insured employers. These matters involve discussion as specific confidential information regarding a self-insured employer that would be exempted from disclosure under the West Virginia Freedom of Information Act pursuant to West Virginia Code §23-1-4(b). Therefore it is appropriate that the discussion take place in Executive Session under the provisions of West Virginia Code §6-9A-4. If there is any action taken regarding these specific matters for an employer this will be done upon reconvening of the public session. Is there a motion to go into Executive Session?

Mr. Marshall made the motion to go into Executive Session. The motion was seconded by Mr. Dissen and passed unanimously.

[The Executive Session began at 1:56 p.m. and ended at 2:23 p.m.]

Chairman Dean: We'll reconvene to regular session. We have two Resolutions before us today. The first Resolution is for the renewal of self-insured status for 10 companies. Is there a motion to renew the self-insured status for the 10 companies on Exhibit A?

American Electric Power Company, Inc.
Columbia West Virginia Corporation
Dolgencorp, LLC
EQT Corporation
First Energy Corp.
Homer Laughlin China Company (The)
JELD-WEN, Inc.
Pilgrim's Pride Corporation of West Virginia, Inc.
U. S. Silica Company
Wheeling Hospital, Inc.

Mr. Dissen: So moved.

Mr. Marshall: Second.

Chairman Dean: A motion has been made and seconded. Any question on the motion? All in favor, "aye." Opposed, "nay." The ayes have it. [Motion passed.]

The next Resolution is the one that Mr. Pauley spoke about, and it says: *"Therefore be it resolved that the West Virginia Workers' Compensation Industrial Council hereby approves the recommendation of the West Virginia Offices of the Insurance Commissioner to revoke the self-insured status of Atlantic Development and Capital, LLC effective May 5, 2016."* Is there a motion to approve?

Mr. Marshall: So moved.

Mr. Dissen: Second.

Chairman Dean: A motion has been made and seconded. Any question on the motion? All in favor, "aye." Opposed, "nay." The ayes have it. [Motion passed.]

Is there anything that anybody else would like to bring up under regular session?
Ms. Brown?

Ms. Thornhill-Brown: I don't believe so.

Chairman Dean: Delegate Bates?

Delegate Bates: No.

Chairman Dean: Delegate Westfall?

Delegate Westfall: No, sir.

Chairman Dean: Mr. Dissen?

Mr. Dissen: Yes. It was brought up earlier that this is "Employee Appreciation Week." And if I can, Mr. Chairman, on behalf of the Council, we would like to offer our thanks and appreciation to the employees of the Offices of the West Virginia Insurance Commissioner and Office of Judges for their service, and congratulations to the

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employees that received their service awards, and our condolences to the family of Shirley Parrish for her three decades of dedicated and faithful service to the State of West Virginia.

Commissioner Riley: Thank you very much. I echo what Judge Roush said. We do have some fantastic employees around here, and we certainly appreciate the recognition and the kind words.

Chairman Dean: Is there a motion for that?

Mr. Hartsog: So moved.

Mr. Marshall: Second.

Chairman Dean: A motion has been made and seconded. Any question on the motion? All in favor, "aye." Opposed, "nay." The ayes have it. [Motion passed.] Who is going to draft this up? Did you want a letter?

Mr. Dissen: I just wanted it as part of the minutes.

Mr. Marshall: Maybe a Resolution would be in the minutes, and send a copy of that portion of the minutes under the signature of our Chairman to the family.

Commissioner Riley: And we'll share that with the employees and the family also.

Chairman Dean: Mr. Hartsog, do you have anything else you'd like to bring up?

Mr. Hartsog: No, sir.

Chairman Dean: Mr. Marshall?

Mr. Marshall: No, sir.

Chairman Dean: Commissioner Riley?

Commissioner Riley: No, sir.

Chairman Dean: Mr. Pauley?

Mr. Pauley: No, sir.

9. Adjourn

Chairman Dean: Very good. Is there a motion for adjournment?

Mr. Hartsog: So moved.

Mr. Dissen: Second.

Chairman Dean: A motion has been made and seconded to adjourn our meeting. Any question on the motion? All in favor, "aye." Opposed, "nay." The ayes have it. We are adjourned.

There being no further business the meeting adjourned at 2:30 p.m.